

## CCRB INVESTIGATIVE RECOMMENDATION

|   |   |  |   |                                    |                                 |
|---|---|--|---|------------------------------------|---------------------------------|
| Investigator:<br>Jeffrey Mulinelli (S)            | Team:<br>APU  | CCRB Case #:<br>201800398                  | <input type="checkbox"/> Force                        | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|   |   |  | <input checked="" type="checkbox"/> Abuse             | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Wednesday, 01/17/2018 1:20 AM | Location of Incident:<br>Powell Street and Belmont Avenue | Precinct:<br>73                            | 18 Mo. SOL<br>7/17/2019                               | EO SOL<br>7/17/2019                |                                 |
| Date/Time CV Reported<br>Wed, 01/17/2018 2:03 AM  | CV Reported At:<br>CCRB                                   | How CV Reported:<br>Call Processing System | Date/Time Received at CCRB<br>Wed, 01/17/2018 2:03 AM |                                    |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |
|                    |      |              |
|                    |      |              |

| Subject Officer(s)  | Shield | TaxID  | Command |
|---------------------|--------|--------|---------|
| 1. An officer       |        |        | PSA 2   |
| 2. SGT David Grieco | 03830  | 940216 | PSA 2   |

| Officer(s)            | Allegation   | Investigator Recommendation |
|-----------------------|--|-----------------------------|
| A.SGT David Grieco    | Abuse: Sergeant David Grieco stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.  |                             |
| B.SGT David Grieco    | Abuse: Sergeant David Grieco threatened to issue a summons to § 87(2)(b)                             |                             |
| C. An officer         | Abuse: An officer questioned § 87(2)(b)  |                             |
| D. An officer         | Abuse: An officer frisked § 87(2)(b)   |                             |
| E. An officer         | Abuse: An officer searched § 87(2)(b)  |                             |
| F. An officer         | Abuse: An officer frisked § 87(2)(b)   |                             |
| G. An officer         | Abuse: An officer searched § 87(2)(b)  |                             |
| H.SGT David Grieco    | Abuse: Sergeant David Grieco searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. |                             |
| I.SGT David Grieco    | Abuse: Sergeant David Grieco searched § 87(2)(b)   |                             |
| § 87(4-b), § 87(2)(g) |  |                             |

### Case Summary

On January 17, 2018, § 87(2)(b) filed this complaint via the CCRB's Call Processing System on behalf of himself and his passengers, § 87(2)(b) and § 87(2)(b).

On January 17, 2018, at approximately 1:20 a.m., § 87(2)(b) was driving § 87(2)(b) with two passengers when Sgt. David Grieco stopped his vehicle in the vicinity of Powell Street and Belmont Avenue in Brooklyn (**Allegation A – Abuse of Authority:** § 87(2)(g)). After requesting § 87(2)(b)'s documents, Sgt. Grieco stated that he smelled marijuana. When § 87(2)(b) disputed this, Sgt. Grieco stated that § 87(2)(b) was double parked and asked him if he wanted a ticket (**Allegation B – Abuse of Authority:** § 87(2)(g)). The officers ordered § 87(2)(b) and § 87(2)(b) to exit the vehicle, after which officers questioned § 87(2)(b) and frisked and searched both men (**Allegation C – Abuse of Authority:** § 87(2)(g); **Allegations D, F, and G – Abuse of Authority:** § 87(2)(g); **Allegation E – Abuse of Authority –** § 87(2)(g)). Afterward, Sgt. Grieco searched the rear seat of § 87(2)(b)'s car, including § 87(2)(b)'s backpack (**Allegations H and I – Abuse of Authority:** § 87(2)(g)).

§ 87(2)(b) recorded a 42-second video of the incident with his cell phone [01 Board Review].

### Findings and Recommendations

#### Identification of Subject Officers

§ 87(2)(b) testified that his vehicle was stopped by two plainclothes officers in an unmarked, silver sedan. One of these officers, a white male in his 30s who had blond hair and a receding hairline, also threatened to issue a summons to § 87(2)(b) and later searched § 87(2)(b)'s vehicle. During the incident, § 87(2)(b) noted the RMP's license plate number as § 87(2)(b), § 87(2)(b). Later that same morning, § 87(2)(b) photographed the same vehicle parked outside the PSA 2 stationhouse [02-03 Board Review].

§ 87(2)(b) recorded a 42-second video with his dash-mounted cell phone as the above-described officer searched the back seat of his car [01 Board Review]. It briefly captures the officer's face before § 87(2)(b) leans back and blocks the camera with his arm. A two-second excerpt of the video and a screenshot of the officer's face were cropped and extracted using Input Ace [see video subclip, 04 Board Review; see photos, 05, 26 Board Review]. In this clip and photo, a light-skinned white male officer with light colored hair, a very short fade-style haircut, and thin lips is seen leaning his body into the back seat.



Nash\_Martin\_Subclip.avi

Sgt. Grieco denied having any memory of this incident, and his memo book contained no entries concerning his whereabouts or with whom he was working at the time. However, Sgt. Grieco acknowledged that he was working as the PSA 2 FIO Sergeant at the time of the incident and confirmed that he was assigned the vehicle in § 87(2)(b)'s photo [03, 06-07 Board Review].

Sgt. Grieco's MOS photo, dated August 1, 2016, revealed that he is a white male with light skin, thin lips, and very short brown hair, though his hair appears to be salt-and-pepper and is faded shorter on the sides in the photo [08 Board Review]. During his CCRB interview, Sgt. Grieco had a haircut which closely matched both his MOS photo and the officer captured in the video. Given the fact that Sgt. Grieco closely resembles the officer in § 87(2)(b)'s video, and because he was working at the time of the incident and assigned the vehicle in question, the investigation determined by a preponderance of the evidence that Sgt. Grieco was present during this incident. **Allegations A, B, H, and I** were pleaded against Sgt. Grieco as a result.

The PSA 2 Roll Call for tour 3 on January 16, 2018, listed Sgt. Grieco as the FIO Sergeant and PO Luis Fernandez, PO Jonathan Frith, and PO Michael Wallace as FIO Assistants [09 Board Review]. The memo book entries and CCRB testimonies of PO Fernandez, PO Frith, and PO Wallace confirmed that they ended their tours at 11:35 p.m. on January 16, 2018, as scheduled [10-13 Board Review]. The investigation therefore eliminated them as potential subject officers. No FIO Sergeant, FIO Assistants, or Anti-Crime officers were listed on the PSA 2 Roll Call for tour 1 on January 17, 2018, the Command Log did not note any officers ending their tours at the same time as Sgt. Grieco, and Sgt. Grieco did not remember who he was working with while he incurred overtime [14-15 Board Review]. There was no other NYPD documentation available for this incident. Given these facts, the investigation was unable to identify Sgt. Grieco's partners. **Allegations C through G** were pleaded against "an officer" as a result.

#### **Allegation Not Pleaded**

In a phone statement, § 87(2)(b) reported that an officer questioned him about weapons. § 87(2)(b) believed that the officer also asked similar questions of § 87(2)(b) though he did not hear the specifics of their conversation. § 87(2)(b) did not provide a sworn statement, and § 87(2)(b) denied that he was questioned in this manner [16-17 Board Review]. As such, a question allegation was not pleaded on behalf of § 87(2)(b).

#### **Allegation A – Abuse of Authority: Sergeant David Grieco stopped the vehicle in which**

§ 87(2)(b) and § 87(2)(b) were occupants.

#### **Allegation B – Abuse of Authority: Sergeant David Grieco threatened to issue a summons to**

§ 87(2)(b)

#### **Allegation H – Abuse of Authority: Sergeant David Grieco searched the vehicle in which**

§ 87(2)(b) and § 87(2)(b) were occupants.

#### **Allegation I – Abuse of Authority: Sergeant David Grieco searched § 87(2)(b)**

In his CCRB interview, § 87(2)(b) testified that he was driving his § 87(2)(b) which was in good working order and did not have tinted windows, when he picked up two passengers for § 87(2)(b) about five minutes apart. These passengers are known to the investigation as § 87(2)(b) and § 87(2)(b). § 87(2)(b) did not observe either passenger smoking marijuana at any point, and he denied that his vehicle ever smelled of marijuana. Neither of § 87(2)(b)'s passengers appeared to be carrying any large objects which could have created a bulge.

At an unspecified time, § 87(2)(b) informed § 87(2)(b) that he had observed officers watching him from their car as he waited for the cab. Approximately 30 seconds after § 87(2)(b) picked up § 87(2)(b) and resumed driving, officers in an unmarked silver sedan activated

their lights and stopped § 87(2)(b)'s cab near Powell Street and Belmont Avenue. § 87(2)(b) did not commit any VTL violations before being stopped.

An officer, identified by the investigation as Sgt. Grieco, informed § 87(2)(b) that he had stopped the vehicle because he smelled marijuana. § 87(2)(b) disputed this claim and asked Sgt. Grieco how he could have smelled marijuana if the vehicle's windows were closed. Sgt. Grieco responded, "Well, you're double parked. Do you want a ticket?"

Officers removed § 87(2)(b) and § 87(2)(b) from the vehicle, at which point Sgt. Grieco leaned his body into the car through the open rear driver's side door and scanned the back seat using his flashlight. Sgt. Grieco also opened and moved items around inside § 87(2)(b)'s backpack, which was in the middle of the back seat. This search lasted approximately one minute [02 Board Review].

§ 87(2)(b) provided a video which captures Sgt. Grieco with his upper body leaned into the rear seat of § 87(2)(b)'s cab. Sgt. Grieco appears to be placing items into a backpack and zipping it shut during the first fifteen seconds of this forty-two second video [01 Board Review].



201800398\_20180124\_1605\_DM.MOV

In his phone statement, § 87(2)(b) stated he was in § 87(2)(b)'s cab when § 87(2)(b) picked up § 87(2)(b). § 87(2)(b) did not observe § 87(2)(b) drinking or smoking anything. He never noticed the smell of marijuana emanating from § 87(2)(b)'s vehicle, or anywhere else in the vicinity. After picking up § 87(2)(b), § 87(2)(b) resumed driving for approximately two minutes before being stopped by plainclothes officers in a gray or black Dodge Charger. The officers approached the vehicle and commented about crimes that had been committed in the area. § 87(2)(b) did not recall exactly what the officers said, but he noted that they did not provide any specifics. Officers removed § 87(2)(b) and § 87(2)(b) from the vehicle, after which another officer entered the back seat. § 87(2)(b) did not see what this officer did inside the back seat [17 Board Review].

In his phone statement, § 87(2)(b) stated he was waiting outside for his § 87(2)(b) to arrive when he noticed an unmarked silver car containing three officers parked across the street from him. § 87(2)(b) was not smoking or drinking anything at the time, and there was no odor of marijuana in the vicinity. § 87(2)(b) was wearing a backpack at the time. § 87(2)(b) entered the § 87(2)(b) without incident. However, the officers did a U-turn and followed the § 87(2)(b) for a minute before pulling the driver over. § 87(2)(b) did not hear any officer mention the odor of marijuana. Officers removed § 87(2)(b) and § 87(2)(b) from the vehicle, and § 87(2)(b) left his backpack on the back seat. While § 87(2)(b) spoke with officers, another officer entered the back seat, opened § 87(2)(b)'s backpack, and looked inside of it. Nothing was recovered during this search [16 Board Review].

During his CCRB interview, Sgt. Grieco acknowledged that he was working as the PSA 2 FIO Sergeant at the time of the incident and confirmed that he was assigned the vehicle in § 87(2)(b).

§ 87(2)(b)'s photo. Sgt. Greico also acknowledged that, as an FIO Sergeant, he could have been conducting street enforcement on the date of the incident. However, he did not remember conducting any enforcement near Powell Street and Belmont Avenue on the date of the incident. He also did not recall stopping or searching a vehicle or questioning, frisking, or searching its occupants, or threatening to issue a summons to anyone. He did not remember approaching any vehicles due to the odor of marijuana on the date of the incident. During his CCRB interview, Sgt. Grieco viewed the video recorded by § 87(2)(b) as well as photos of the vehicle's occupants. These items did not refresh his memory of the incident [06 Board Review].

Sgt. Grieco's memo book contained no entries concerning this incident, nor did it note any tasks he carried out or with whom he worked on the date of the incident [07 Board Review]. IAB requests for warrant audits and Stop Reports related to this incident produced negative results [18 Board Review]. As noted above, the investigation was unable to identify which officers were working with Sgt. Grieco at the time of the incident.

§ 87(4-b), § 87(2)(g)

The decision to stop a vehicle is reasonable where the police have probable cause to believe that a traffic violation has occurred. People v. Robinson, 97 N.Y.2d 341 (2001) [20 Board Review]. If a car is readily mobile and probable cause exists to believe it contains contraband, officers are permitted to search the vehicle. Pennsylvania v. Labron, 518 U.S. 938 (1996) [21 Board Review]. An officer must have probable cause that a person has committed a crime in order to search that individual. People v. De Bour, 40 N.Y.2d 210 (1976) [22 Board Review].

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation C – Abuse of Authority: An officer questioned § 87(2)(b)**

**Allegation D – Abuse of Authority: An officer frisked § 87(2)(b)**

**Allegation E – Abuse of Authority: An officer searched § 87(2)(b)**

**Allegation F – Abuse of Authority: An officer frisked § 87(2)(b)**

**Allegation G – Abuse of Authority: An officer searched § 87(2)(b)**

§ 87(2)(b) testified that he watched through his rearview mirror as an officer removed § 87(2)(b) and § 87(2)(b) from his vehicle. He observed the officer touch § 87(2)(b)'s and § 87(2)(b)'s pockets. He did not know if the officer frisked other areas as well. He also observed that the officer appeared to be “digging around” in § 87(2)(b)'s and § 87(2)(b)'s jacket pockets, and he removed a piece of paper from § 87(2)(b)'s jacket pocket. § 87(2)(b) believed that no contraband was discovered [02 Board Review].

§ 87(2)(b) stated that officers escorted him and § 87(2)(b) to the rear of § 87(2)(b)'s vehicle, at which time an officer asked § 87(2)(b) where he was going, if he had any warrants, and if he had any weapons. § 87(2)(b) denied possessing any weapons and revealed that he was headed home. The officer then patted over § 87(2)(b)'s front pockets and the side of his torso. § 87(2)(b) was carrying only his wallet and cell phone at the time. The officer did not enter § 87(2)(b)'s pockets. § 87(2)(b) believed that § 87(2)(b) was frisked and searched by another officer, though he did not pay attention to their interaction because it occurred as § 87(2)(b) was being frisked [16 Board Review].

§ 87(2)(b) stated that an officer brought him to the rear of § 87(2)(b)'s car. The officer then placed his hands into § 87(2)(b)'s coat pockets and jeans pockets in addition to patting the area between § 87(2)(b)'s legs. At the time, § 87(2)(b) did not have any large items on his person which could have created a bulge. Rather, he was carrying only cigarettes [17 Board Review].

§ 87(2)(b)'s video did not capture any officer questioning, searching, or frisking § 87(2)(b) or § 87(2)(b) [01 Board Review].

As discussed above, no NYPD documentation was generated for this incident.

§ 87(2)(g)

§ 87(2)(g)

Sgt. Grieco was identified by the investigation as being on scene, but he did not recall or otherwise note who he was working with at the time of the incident. His FIO Assistants – PO Frith, PO Fernandez, and PO Wallace – had all ended their tours by the time the incident

occurred. No NYPD documentation was generated for this incident, and neither the PSA 2 Roll Call nor the Command Log identified any other officers as potential subjects. § 87(2)(g)

§ 87(4-b), § 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) or § 87(2)(b) has been a party [23 Board Review].
- Sgt. Grieco has been a member of service for 12 years and has been a subject in 24 other CCRB complaints and 46 allegations, of which three were substantiated [19 Board Review]:
  - 201111996 involved a substantiated allegation of a premises entered and searched against Sgt. Grieco. The Board recommended command discipline and the NYPD imposed instructions.
  - 201207718 involved a substantiated allegation of a stop against Sgt. Grieco. The Board recommended command discipline and the NYPD has not yet imposed the forfeiture of one vacation day.
  - 201405351 involved a substantiated allegation of a premises entered and searched against Sgt. Grieco. The Board recommended charges, and Sgt. Grieco was found not guilty at an APU trial. No penalty was imposed.
  - § 87(4-b), § 87(2)(g)
  - § 87(4-b), § 87(2)(g)

#### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- As of August 22, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard this to complaint [24 Board Review].
- § 87(2)(b)

§ 87(2)(b)

[19 Board Review].

- According to the Office of Court Administration (OCA), § 87(2)(b) and § 87(2)(b) have no history of convictions in New York City [25 Board Review].

---

Squad No.: 7

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date